

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

CINDY PIFER,

Plaintiff,

v.

**Civil Action No. 2:09-CV-63
(Judge Bailey)**

**COMMISSIONER OF SOCIAL
SECURITY and SOCIAL SECURITY
ADMINISTRATION,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Doc. 38] dated December 30, 2010, to which neither party filed objections. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the District Court to review the recommendation under the standards that the District Court believes are appropriate, and under these circumstances, the parties' right to *de novo* review is waived. See **Webb v. Califano**, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, because no objections have been filed, this report and recommendation ("R & R") will be reviewed for clear error.

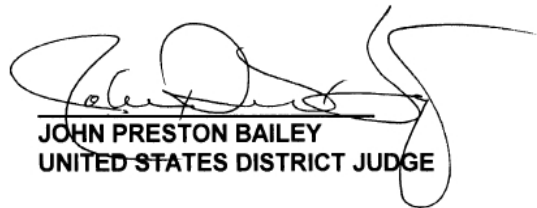
Upon review of the above, it is the opinion of this Court that the Report and Recommendation [Doc. 38] should be, and is, hereby **ORDERED ADOPTED**. For reasons more fully stated in the Report and Recommendation, the Claimant's Motion for Summary

Judgment **[Doc. 31]** is hereby **DENIED** because the ALJ properly evaluated the treating physician's reports and because the RFC determination is left solely for the ALJ. For the same reasons, the Commissioner's Motion for Summary Judgment **[Doc. 35]** is **GRANTED**. Accordingly, this matter is hereby **STRICKEN** from the active docket of this Court. The Clerk shall enter judgment in favor of the defendants.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to all counsel of record.

DATED: January 19, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE